IN THE HIGH COURT OF JUDICATURE FOR RJASTHAN

AT BENCH JAIPUR

J U D G M E N T

SB Civil Misc. Appeal No. 593/91
The Milling Trading Company Ltd. & Another Vs.
Shri Krishana Chandra Gupta

8.1.2007

Hon'ble Mr. Justice KS Rathore

Mr. PC Shah, for the appellant.
Mr. Suresh Kashyap, for the respondents.

This misc. appeal is directed against The order impugned dated 5.9.91 passed by the learned Commissioner, Workmen's Compensation Act, 1923, Jaipur City, Jaipur in Case No. WCF/3/87.

On 23.10.92, this Court directed that the amount deposited by the appellants may be withdrawn by the respondent only on furnishing security for restitution to the satisfaction of the authority concerned.

It is not disputed that the compensation amount which has been awarded under the Workmen Compensation Act, 1923 (for short, the Act of 1923) has been paid to the father of the workman.

Mr. Shah submits that the award passed by the Commissioner under the Act of 1923 is contrary to the provisions of law and he referred section 2 of the Act of 1923.

Section 2 deals with the definition and sub clause d of section 2 deals with the 'dependent'. Dependent means a widow, a minor (legitimate or adopted) son, an unmarried (legitimate or adopted) daughter or a widowed mother; and (ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm and clause (iii) of sub section (d) of Section 2 provides if wholly or in part dependent on the earnings of the workman at the time of his death (a) a widower, and (b) a parent other than a widowed mother.

Here, in the instant case, clause (d) of sub clause (iii) is attracted as the application was moved on behalf of the father of the workman.

Learned counsel for the appellant referred a statement recorded before the Commissioner where the claimant father has stated on oath that he is a practicing lawyer and earning Rs. 1000/- to Rs.

2,500/- per month and having one acre land in his khatedari but he mentioned that he is partly dependent to his son. Admittedly, the son was getting Rs. 700/- per month at the time of his death.

The appellant in support of his submissions placed reliance on the judgment rendered by this Court in the Case of “M/s. Kunnesingh Bhanwarlal Vs. Navia” reported in AIR 1966 Rajasthan 36 wherein this Court has held that father of the deceased workman can only be considered to be a dependent on the deceased if it is shown that he was wholly or in part dependent on the earning of the deceased workman at the time of the latter's death.

Similar view has been expressed by the Allahabad High Court in the case of “G.N. Bhandari, Vs. The Railway Administration, New Delhi and the Allahabad High Court while considering the Workmen Compensation Act and Indian Railways Act has observed that where the father claimed compensation on death of his son in a train accident, the claim would not be maintainable when there was no material on record

to show that the claimant was dependent on the earnings of his deceased son.

Similar view has been taken by the Madras High Court in the case of St. Joseph's Automobile And Mechanical Works, Tuticorin V. Maria Soosai Pillai reported in AIR 1953.

Per contra, learned counsel for the claimant father submits that the objection which are raised here in this appeal has not been raised before the Commissioner under the Act of 1923 and he further submits that the father of the deceased was part dependent on the earning of the workman.

I have considered the award passed by the Commissioner under the Workmen Compensation Act, 1923. So far compensation amount is concerned, I am convinced that considering the income, the compensation has been rightly commuted but this aspect has not been properly considered whether the father is partly dependent on the earning of his son or not as held by this Court, Allahabad High Court and Madras High Court that it is for the claimant to prove that he is dependent on the earning of his son and on the contrary, the appellant is able to prove by the witness of the

father of the claimant itself that he was earning Rs. 1,000/- to 2,500/- per month as an Advocate. Admittedly, he cannot be supposed to be dependent of his son who was only earning Rs. 700/- per month at the time of death.

Looking to t-he facts and circumstances of the case, the compensation which has been awarded and disbursed pursuant to the direction issued by this Court and looking to the fact that the amount is not big enough, I deem it proper that this may be considered as an ex gratia payment looking to the age of the workman and agony suffered by his family.

In view of the observations made here in above, the disbursement of the amount which has been made pursuant to the award and direction of this Court be treated as ex gratia payment on account of death of respondent's son while working with the appellant. Accordingly, the order impugned dated 5.9.91 is modified.

With these observations, the appeal stands disposed of.

(KS RATHORE), J.